

REMARKS

Applicants submit, contemporaneously herewith, a Request for Continued Examination pursuant to 37 C.F.R. §1.114.

Claims 1-19 are pending. Claims 1-19 have been rejected.

Claim Rejections – 35 U.S.C. § 102

Claim 1-10 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,013,081 to Burkinshaw et al ("Burkinshaw '081").

Burkinshaw '081 discloses femoral sizing and resection device 10, shown in Fig. 1, having sizing member 12, slide member 14, femoral cut guide 16, distal cut guide 18, and reference device 20. Slide member 14 is slidably received by groove 34 of sizing member 12. Referring to Fig. 3, received within grooves 60a, 60b of sizing member 12 are tongues 72, 82 of femoral cut guide 16. As shown in Fig. 10, distal cut guide 18 is then positioned on pins 158 extending through apertures in femoral cut guide 16. To adjust the position of distal cut guide 18, pins 156 are removed and distal cut guide 18 is slide along pins 158 and removed therefrom. Distal cut guide 18 is then aligned to receive pins 158 through another set of apertures 160, 160a, 160b (Fig. 11). Once aligned, distal cut guide 18 is slide along pins 158 and toward the femur.

Applicants respectfully submit that amended independent Claim 1 is not anticipated by Burkinshaw '081, as Burkinshaw '081 fails to disclose each and every limitation called for in amended independent Claim 1. Specifically, amended independent Claim 1 calls for, *inter alia*, at least one cutting jig which is adapted to be coupled to a base element fixed to the bone, wherein the cutting jig defines, in the fixed state and in each case by means of a slot for a cutting tool, a first cutting plane with respect to the base element and a second cutting plane with respect to the first cutting plane and wherein at the cutting jig *the orientation of the second cutting plane is rotatably adjustable relative to the first cutting plane while the cutting jig remains coupled to the base element*.

Taking femoral cut guide 16 and distal cut guide 18 of Burkinshaw '081 as the cutting jig defining a first cutting plane and a second cutting plane, as called for in amended independent Claim 1, the second cutting plane, i.e., the plane formed through distal cut guide slot 160 of distal cut guide 18, cannot be adjusted relative to the first cutting plane, i.e., the plane formed by femoral cut guide slot 96, *while the cutting jig remains coupled to the base*

element. Specifically, to adjust the orientation of either distal cut guide slot 160 or femoral cut guide slot 96 relative to one another, femoral cut guide 16 and distal cut guide 18 must be uncoupled. Otherwise, with distal cut guide 16 and femoral cut guide 18 attached as shown in Fig. 10 of Burkinshaw '081, any movement of distal cut guide 16 will result in corresponding movement of femoral cut guide 18, effectively preventing *relative* movement of either of cut guides 16, 18.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claim 1, as well as claims 2-10 and 14, which depend therefrom, are not anticipated by Burkinshaw '081.

Claim 1, 4, 5, and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,925,049 to Gustilo et al. ("Gustilo '049").

Gustilo '049 discloses femoral resection instrument 300, shown in Fig. 24, having posterior body portion 302, first anterior body portion 320, and second anterior body portion 350. First and second anterior body portions 320, 350 include pairs of apertures 322, 352 (Figs. 26, 30) for the receipt of arms (shown in Fig. 24) extending from posterior body portion 302.

Applicants respectfully submit that amended independent Claim 1 is not anticipated by Gustilo '049, as Gustilo '049 fails to disclose each and every limitation called for in amended independent Claim 1. Specifically, amended independent Claim 1 calls for, *inter alia*, at least one cutting jig adapted to be fixed to a base element, wherein the cutting jig defines a first cutting plane with respect to the base element and a second cutting plane with respect to the first cutting plane and wherein at the cutting jig the orientation of the second cutting plane is *rotatably adjustable* relative to the first cutting plane *while the cutting jig remains coupled to the base element*.

In contrast to amended independent Claim 1, none of posterior body portion 302, first anterior body portion 320, or second anterior body portion 350 are rotatably adjustable relative to a first cutting plane while coupled to a base element. Specifically, in order to rotate either of anterior body portions 320, 350, the same must be removed from posterior body portion 302 and then must be rotated and finally reconnected to posterior body portion 302. Thus, femoral resection instrument 300 of Gustilo '049 does not disclose a cutting jig adapted to be fixed to a base element, wherein the cutting jig defines a first cutting plane with

respect to the base element and a second cutting plane with respect to the first cutting plane and wherein at the cutting jig the orientation of the second cutting plane is *rotatably adjustable* relative to the first cutting plane *while the cutting jig remains coupled to the base element*.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claim 1, as well as Claims 4, 5, and 11, which depend therefrom, are not anticipated by Gustilo '049.

Claim Rejections – 35 U.S.C. § 103

Claim 12 and 13 are rejected under 35 U.S.C. § 102(b) as being obvious over Burkinshaw '081 in view of U.S. Patent No. 6,796,986 to Duffner ("Duffner '986").

In forming this rejection, the Examiner stated, and Applicants respectfully agree, that Burkinshaw '081 "do[es] not disclose the turntable feature of the cutting jig for ease of use." However, the Examiner relied on Burkinshaw '081 as disclosing all of the limitations of amended independent Claim 1, from which Claims 12 and 13 depend. Thus, the Examiner relies on Duffner '986 for disclose or suggesting the limitations of Claims 12 and 13. Dependent Claim 12 calls for the cutting jig of amended independent Claim 1 further including, *inter alia*, a turntable arrangement with a turntable which is rotatably supported at the cutting jig and with which a guide section is rotatably fixedly connected in which the slot defining the second cutting plane is formed, wherein rotation of the turntable results in corresponding rotation of the guide section.

Duffner '986 discloses goniometer 100, shown in Fig. 1, having arms 120, 140 with cutting guides 200 connected thereto. Arms 120, 140 are pivotally connected at pivot 160 and can be locked in position by rotation of locking knob 170. Even assuming, *arguendo*, that knob 170 is turntable, as required by amended dependent Claim 12, Duffner '986 fails to disclose or suggest a turntable with which a guide section is rotatably fixedly connected in which the slot defining the second cutting plane is formed, *wherein rotation of the turntable results in corresponding rotation of the guide section*. In contrast, rotation of locking knob 170 does not result in corresponding rotation of cutting guides 200.

Application Serial No. 10/820,988
Amendment After Final dated February 5, 2007
Reply to Final Office Action dated November 3, 2006

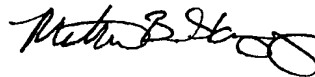
For at least the foregoing reasons, Applicants respectfully submit that amended dependent Claim 12, as well as Claim 13, which depends therefrom, are not obvious over Burkinshaw '081 in view of Duffner '986.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



Matthew B. Skaggs
Registration No. 55,814

Attorney for Applicants

MBS/nw

BAKER & DANIELS LLP
111 East Wayne Street, Suite 800
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700

Enc. Return Postcard

CERTIFICATION OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on: February 5, 2007

MATTHEW B. SKAGGS, REG. NO. 55,814

Name of Registered Representative



Signature

February 5, 2007

Date